

**TEXAS WATER CODE**  
**CHAPTER 26 – WATER QUALITY CONTROL**

- § 26.039. ACCIDENTAL DISCHARGES AND SPILLS.
- § 26.262. POLICY AND CONSTRUCTION.
- § 26.266. REMOVAL OF SPILL OR DISCHARGE.
- § 26.267. EXEMPTIONS.

## § 26.039. ACCIDENTAL DISCHARGES AND SPILLS.

- (a) As used in this section:
- (1) "Accidental discharge" means an act or omission through which waste or other substances are inadvertently discharged into water in the state.
  - (2) "Spill" means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.
  - (3) "Other substances" means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.
- (b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the commission as soon as possible and not later than 24 hours after the occurrence. The individual's notice to the commission must include the location, volume, and content of the discharge or spill.
- (c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the commission may adopt or issue.
- The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.
- (d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter.
- (e) If an accidental discharge or spill described by Subsection (b) from a wastewater treatment or collection facility owned or operated by a local government may adversely affect a public or private source of drinking water, the individual shall also notify appropriate local government officials and local media.
- (f) The commission by rule shall specify the conditions under which an individual must comply with Subsection (e) and prescribe procedures for giving the required notice. The rules must also state the content of the notice and the manner of giving notice. In formulating the rules, the commission shall consider:
- (1) the nature and extent of the discharge or spill;
  - (2) the potential effect of the discharge or spill; and
  - (3) regional information about the susceptibility of a particular drinking water source to a specific type of pollution.

## **§ 26.262. POLICY AND CONSTRUCTION.**

It is the policy of this state to prevent the spill or discharge of hazardous substances into the waters in the state and to cause the removal of such spills and discharges without undue delay. This subchapter shall be construed to conform with Chapter 40, Natural Resources Code.

## **§ 26.266. REMOVAL OF SPILL OR DISCHARGE.**

- (a) Any owner, operator, demise charterer, or person in charge of a vessel or of any on-shore facility or off-shore facility shall immediately undertake all reasonable actions to abate and remove the discharge or spill subject to applicable federal and state requirements, and subject to the control of the federal on-scene coordinator.
- (b) In the event that the responsible person is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of the responsible person is inadequate, the commission may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.
- (c) Any discharge or spill of a hazardous substance, the source of which is unknown, occurring in or having a potentially harmful effect on waters in this state or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter waters in this state may be removed by or under the direction of the executive director.

Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the commission's approval, from the account, subject to the authority of the commission to seek reimbursement from an agency of the federal government, and from the responsible person if the identity of that person is discovered.

- (d) Deleted by Acts 1989, 71st Leg., ch. 99, § 4, eff. Sept. 1, 1989. Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1983, 68th Leg., p. 4209, ch. 669, § 3, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 795, § 1.109, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 930, § 5, eff. Sept. 1, 1985; Acts 1989, 71st Leg., ch. 99, § 4, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 333, § 15, eff. Sept. 1, 1997.

## **§ 26.267. EXEMPTIONS.**

- (a) No person shall be held liable under this subchapter for any spill or discharge resulting from an act of God, act of war, third party negligence, or an act of government.
- (b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state.
- (c) Notwithstanding any other provision of this subchapter, the state or the commission shall utilize any and all procedures relating to releases or threatened releases of solid wastes contained in Chapter 361, Health and Safety Code prior to utilizing the provisions of this subchapter with respect to such releases or threatened releases.